

**STATE OF MINNESOTA  
COUNTY OF RAMSEY**

**DISTRICT COURT  
SECOND JUDICIAL DISTRICT**

**EMERGE Community Development,**

**File No. 62-CV-18-1256  
Judge David C. Higgs**

**Plaintiff,**

**vs.**

**ORDER DENYING MOTION FOR  
TEMPORARY RESTRAINING ORDER**

**Minnesota Department of Employment and  
Economic Development, Shawntera Hardy**

**Defendants.**

This matter was heard before the **Honorable David C. Higgs** on May 8, 2018 on Plaintiffs' Motion for a Temporary Restraining Order.

**Diana Morrissey, Esq. and Nancy Hilden, Esq.** appeared for and on behalf of Plaintiffs. **Steven Forrest, Esq. and Ryann Sparrow, Esq.**, appeared for and on behalf of Defendant.

Upon all the files, records and proceedings herein,

**IT IS HEREBY ORDERED:**

1. That Plaintiff's Motion for a Temporary Restraining Order is hereby **DENIED**.
2. That Plaintiff's Motion for a Writ of Mandamus is **GRANTED** in part.
  - a. DEED is ordered to issue grant fund reimbursements in the total amount of \$568,000.
3. That the attached memorandum is incorporated by reference.

**BY THE COURT:**

Date:

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David C. Higgs  
District Court Judge

## MEMORANDUM

### **I. Temporary Restraining Order**

Plaintiffs move the Court for an order temporarily restraining Defendant from continuing its suspension of EMERGE’s grant funding while Defendant, the Minnesota Department of Employment and Economic Development (“DEED”) conducts an audit.

A temporary injunction’s purpose is to preserve the *status quo* until the case is decided on the merits. In determining whether a temporary injunction should be granted, the Court considers five factors:

- a. The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief;
- b. The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial;
- c. The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief;
- d. The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal; and
- e. The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

*Dahlberg Bros. Inc., v. Ford Motor Co.*, 137 N.W.2d 314, 321 (Minn. 1965).

#### **a. The relationship of the parties favors denial of the injunction.**

This dispute arises from Plaintiffs’ challenge to Defendant’s suspension of grant funds in September 2017. In 2016, the Minnesota Legislature appropriated 35 million dollars to DEED to address issues related to racial equity. DEED was specifically designated to administer a

\$4,250,000 grant to EMERGE, with the purpose of providing employment services in communities with high rates of African American joblessness. The parties are therefore in a grantor-grantee relationship, which is governed by a contract. EMERGE had been awarded similar grants in the past, and had worked with the same grant monitor. The relationship of the parties therefore favors denying the TRO, as their relationship and expectations are clearly set out in the contract.

**b. The harm inflicted on Defendant if the injunction issues pending trial is greater than that suffered by the Plaintiffs if the temporary restraint is denied.**

EMERGE has the burden of proving that “an injunction is necessary to prevent great and irreparable injury.” *Cherne Indus. Inc. v. Grounds & Assoc., Inc.*, 278 N.W.2d 81 (Minn. 1979). The Court must take into account “the harm to be suffered by the moving party if the temporary injunction is denied as compared to that inflicted on the non-moving party if the injunction issues pending trial.” *Yager v. Thompson*, 352 N.W.2d 71 (1984). If temporary restraint is denied, Defendant will continue its suspension of grant funds, and Plaintiffs will be deprived of the funding to which they believe they are entitled. Being deprived of funding means that EMERGE will continue to face difficulties paying employees and serving the communities it was tasked with helping under the contract.

If temporary restraint is granted, Defendant will be required to administer the funding as set out in the grant contract, just as it would be doing if it had not commenced the audit and suspended the funds and programming. DEED will still be able to continue its audit and monitoring operations. Given that granting the TRO would bring a relatively small amount of harm to DEED, while denying it would harm EMERGE’s ability to carry out its community services, this factor weighs in favor of Plaintiff and granting the TRO.

**c. Plaintiff's Success on the Merits is in Doubt.**

"A preliminary injunction will not issue where the right which complainant seeks to have protected is in doubt or where the right to the relief asked is doubtful" *Dahlberg* at 321.

EMERGE argues that DEED has breached the implied covenant of good faith and fair dealing by making it impossible for EMERGE to carry out its duties under their contract. EMERGE alleges that DEED has arbitrarily suspended legislative funding and has dragged the review process on for much longer than necessary. At this point in time, it is not clear whether DEED has acted in good faith in how it has handled reviewing and monitoring EMERGE's finances. However, it is clear from the grant contract language that DEED was required to suspend funds upon its determination that EMERGE was not performing its contractual duties, and that DEED's authorized representative had sole discretion to make that determination. This factor therefore falls in favor of denying the restraining order, as the Court cannot say that EMERGE is likely to succeed on the merits.

**d. Public interest is an equal factor for both sides**

The public interest factor is not significant here, as both sides possess public interest concerns associated with granting or denying the motion. On one hand, there is a significant public interest for EMERGE to receive the grant funding that was specifically designated to it by the Minnesota Legislature in order to effectuate its purpose under that grant. On the other hand, there is also public interest in DEED being able to effectively monitor and review EMERGE's actions under the grant contract, to ensure that taxpayer funds are being used responsibly. This factor is weighed evenly for both sides.

**e. There are administrative burdens associated with granting the injunction.**

The Court's issuance of a temporary restraining order would have administrative burdens that weigh in favor of denying the temporary restraining order. Ordering DEED to resume its payment of grant funds would place the Court in a burdensome position of monitoring DEED's auditing process and making sure that the funds are being issued. This factor weighs in favor of denying the temporary restraining order.

Given that three of the five factors fall in favor of denying the motion, this Court must deny the temporary restraining order. While the "balance of harm" factor is significant, and does indicate that EMERGE will be harmed by the denial of the restraining order, it cannot overcome the contractual relationship of the parties, the likelihood of success on the merits, and the administrative burden on the court, which all demonstrate that the motion for a temporary restraining order should be denied.

**II. Writ of Mandamus**

Plaintiff also asks this Court to issue a Writ of Mandamus, compelling Defendant to "fulfill their legal duties as fiscal intermediaries of grant funds appropriated by the Minnesota Legislature and to work collaboratively with EMERGE and its subgrantees." Minnesota Statute §586.01 authorizes the Court to issue a Writ of Mandamus "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." In 2016 the Minnesota Legislature provided Emerge with an equity grant for community services. EMERGE then entered a master grant contract with DEED, enabling EMERGE to accept equity grant development funds from DEED. DEED therefore has a duty to process those funds and collaborate with EMERGE in fulfilling the Legislative intent of the grant.

As discussed above, EMERGE is likely to be harmed by the continued suspension of grant funds, and the denial of the temporary restraining order. A Writ of Mandamus is appropriate here to help alleviate that harm, and compel DEED to perform its duty as set out by the Legislature. While DEED does have the authority to monitor EMERGE's activities and withhold funding if it determines the contract is not being performed adequately, it is also bound to pay for the services that were satisfactorily performed by EMERGE.

For these reasons, Plaintiff's motion for a Writ of Mandamus is GRANTED in part. DEED is ordered to promptly process and issue appropriate grant fund reimbursements for program expenses made up to the time DEED suspended funding, which includes (a) \$233,000 owed EMERGE for activity prior to the initial suspension and (b) \$335,000 for September and October of 2017 for activity up to the point where DEED demanded suspension of activities.

DCH